Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

Karla Walters	)	
302 W. 5th Street	)	
Boone, IA 50036	)	DIA Case No. 18IWDUI0035
	)	IWD Appeal No. 18A-UI-06588
Appellant,	)	
	)	
v.	)	
	)	
Iowa Workforce Development	)	**PROPOSED DEFAULT DECISION**
	)	
Respondent.	)	

STATEMENT OF THE CASE

An appeal was filed from a representative's unemployment insurance decision dated June 11, 2018, that concluded Karla Walters was not eligible to receive unemployment insurance benefits because she was discharged from work for wanton carelessness. The issue certified for appeal was whether the Department properly determined that Walters was ineligible for unemployment insurance benefits because she was discharged by the Department for misconduct. Notice of telephone hearing was mailed to the parties' last known addresses of record on June 20, 2018, setting the hearing for 1:00 p.m. on July 6, 2018, before Administrative Law Judge Forrest Guddall. The notice indicated that the judge would wait five minutes after the time the hearing was scheduled to begin to allow all parties to call in. The notice informed the parties it was their responsibility to call in for the hearing. The notice further indicated that if the appellant did not call in within that time, she would not be able to participate in the hearing. The appellant did not call in and a default decision was issued. Within the time allowed for a motion to vacate, Walters filed such a motion, alleging she did not receive the notice of telephone hearing. Her motion was granted and the hearing was reset for August 8, 2018, at 1:00 p.m., before Administrative Law Judge Joseph Ferrentino.

At the date and time listed above, neither party appeared for the hearing. The undersigned waited on the line until 1:10 p.m. Based upon the appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE

Should the appeal be dismissed based upon neither party participating in the hearing?

FINDINGS OF FACT

The parties were properly notified of the scheduled hearing on this appeal. The appellant did not call in to the conference call and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The representative's decision concluded that the appellant was not eligible to receive unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW

The Iowa Administrative Procedures Act at Iowa Code section 17A.12(3) provides in pertinent part:

> If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. … If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

The agency rules at Iowa Administrative Code rule 871-26.14(7) provide:

> If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.
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> a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
>
> b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
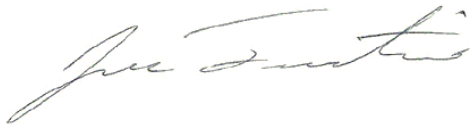
    c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The appellant appealed the representative's decision but failed to participate in the hearing. The appellant has therefore defaulted on her appeal pursuant to Iowa Code section 17A.12(3) and Iowa Administrative Code rule 871-24.14(7), and the representative's decision remains in force and effect.

DECISION

The representative's unemployment insurance decision dated June 11, 2018, is affirmed. The Department's determination that Karla Walters was not eligible to receive unemployment insurance benefits remains in effect.

Dated this August 8, 2018.

Joseph Ferrentino
Administrative Law Judge

cc: Ryan West, IWD (by email); Emily Chafa, IWD (by email); Joni Benson, IWD (by email); Jodi Douglas, IWD (by email); Nicholas Olivencia, IWD (by email); Sara Bath, IWD (by email)